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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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MICHAEL EUGENE WYATT,
Petitioner,
v.
JOHN SUTTON,
Respondent.

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Case No. [18-cv-06588-PJH](#)

**ORDER DENYING PETITION FOR
WRIT OF HABEAS CORPUS AND
GRANTING CERTIFICATE OF
APPEALABILITY**

Re: Dkt. No. 40

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This is a habeas corpus case filed pro se by a state prisoner pursuant to 28 U.S.C. § 2254. The court ordered respondent to show cause why the writ should not be granted. Respondent filed an answer and lodged exhibits with the court and petitioner filed several responses that the court has reviewed. For the reasons set out below, the petition is denied.

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BACKGROUND

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A jury found petitioner guilty of first-degree murder. *People v. Wyatt*, No. A144872, 2018 WL 1633816, at *5 (Cal. Ct. App. April 5, 2018). Petitioner was sentenced to 56 years to life in prison. *Id.* The California Court of Appeal affirmed the conviction and the California Supreme Court denied review. *Id.*; Answer, Exs. J, L. Petitioner filed a habeas petition with the California Supreme Court, which denied review. Ex. M.

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STATEMENT OF FACTS

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The California Court of Appeal set forth the relevant facts:

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An information charged [petitioner] with the 2012 murder of James Nobles (Pen. Code, § 187) and alleged that he personally used a deadly weapon in the commission of the

1 offense (Pen. Code, § 12022, subd. (b)(1)). The information
2 also alleged that [petitioner] had a prior serious felony
3 conviction for his 1995 voluntary manslaughter of Titus
4 Crowder in 1995 for purposes of Penal Code section 667,
5 subdivisions (a) and (e).

6 **A. Prosecution Case**

7 On February 8, 2012, the Alameda County Sheriff's office
8 received a report that a dead body had been discovered near
9 the Bay Area Rapid Transit (BART) tracks in Hayward.
10 Detective Joshua Armijo of the Alameda County Sheriff's Office
11 responded to the scene and observed the body of an African-
12 American male at the bottom of a dirt embankment, near the
13 support pillar of the elevated BART tracks. The body and
14 clothing were relatively clean, leading Armijo to conclude that
15 the victim had been killed elsewhere. The victim had two
16 incised puncture wounds on his left chest, a swollen area on
17 his left temple, a blackened eye, jawline swelling, and blood
18 from his nostrils.

19 **1. Investigation**

20 The police did not find identification or personal effects on the
21 body, but used fingerprints to identify the victim as James
22 Nobles. Officers contacted Nobles's cousin, Ioma Nobles. She
23 told them that Nobles had been living with "Mike" in Hayward.
24 Although she did not have the exact address, she gave officers
25 Mike's telephone number, which she would call if she wanted
26 to reach Nobles. Police traced the phone number to
27 [petitioner], who lived on Hampton Road, approximately a
28 quarter-mile from where Nobles's body was discovered. They
also determined this to be Nobles's last known address.

Police obtained a warrant to search [petitioner's] apartment
on February 10, 2012. Officers executing the warrant observed
blood drops inside the doorway and bloodstains on a mattress.
Forensic evidence specialists found trace amounts of blood
throughout the apartment. The search lasted approximately 12
hours until the morning of February 11; [petitioner] was not
there.

22 **2. Forensic Pathologist**

23 Dr. Thomas Rogers conducted an autopsy on Nobles's body.
24 He observed several blunt force injuries, including a bruise to
25 the right eye, a laceration on the right side of the nose, and a
26 bruise on the right arm. There were superficial incised wounds
27 on Nobles's face, neck, and lower right leg, as well as six
28 deeper stab wounds—two in the chest, one in the neck, one
near the jawline, and two in the leg—that had been inflicted
recently. The two chest wounds penetrated his left lung and
caused life-threatening injuries. Dr. Rogers opined that
multiple stab wounds and incised wounds were the cause of
Nobles's death.

3. Ioma's Testimony

Ioma testified that Nobles was mentally disabled and could be "slow" and "childish." He took medications to control his symptoms, but had trouble remembering to take them. When he did not take his medication, he would behave oddly and mumble things that did not make sense. Even then, however, Nobles was not violent, and Ioma had never seen him behave aggressively or assault anyone.

4. [Petitioner's] Confession

[Petitioner] surrendered to police on February 12, 2012. His shoes and pants had apparent bloodstains. He waived his Miranda rights and agreed to be interviewed by Detective Armijo and Alameda County Sheriff's Sergeant Dave Dixon. (See *Miranda v. Arizona* (1966) 384 U.S. 436.) A redacted recording of the interview was played for the jury.

[Petitioner] told the officers that he was self-employed and took care of people in their homes. Years earlier he became friends with Nobles, who moved in with him in mid-2010. Nobles usually used his disability checks to pay the rent on the apartment. [Petitioner] denied they had any romantic involvement, but acknowledged that Nobles may have been interested in one.

[Petitioner] generally did not have any conflict with Nobles. However, sometimes Nobles would "go off the deep end" and talk to himself, behave in a childlike manner, and at times urinate on himself. [Petitioner] would let him act out, and Nobles would come back around. Most of the time, "[Nobles] was a gentle, easy-goin' guy regardless of what the circumstances," "he would not harm a fly," and he was "never a threatening person."

[Petitioner] claimed he did not know Nobles's whereabouts and had not done anything to him. After police said they could prove that Nobles was killed in [petitioner's] apartment, however, [petitioner] admitted to killing Nobles during a fight. He claimed that Nobles "flipped out," [petitioner] tried to subdue him, and "the next thing you know, it just got outa hand and I lost it."

[Petitioner] recounted the events as follows. Two weeks before the homicide, Nobles started acting out consistently. Nobles acted out so much—every day with constant movement or incessant babbling—that [petitioner] asked him to move to a board and care home. Nobles did so for a while, but [petitioner] let him return to the apartment.

Around 2:00 a.m. on Sunday, February 5, 2012, [petitioner] received a text from a male friend. Nobles knew it was from a man, and he became upset. Nobles started breathing hard and was constantly moving, making noises, and "acting real bad." [Petitioner] asked Nobles to "chill out," to no avail. [Petitioner]

repeatedly asked him to "just take it easy" and lie down, but Nobles did not stop. [Petitioner] told Nobles it would be best for him to leave at the end of the month, "[b]ecause this is gettin' outa hand here . . . [a]nd you constantly makin' it uncomfortable where I'm livin' at." Nobles "rant[ed] and rave[d]." [Petitioner] was unable to sleep during Nobles's disruption, which continued until around 6:00 a.m. on Sunday.

[Petitioner] awoke around 9:00 a.m. on Sunday. Nobles also awoke and was fine for a while, but then restarted his barrage of noise and movement. [Petitioner] repeatedly asked Nobles to calm down, but Nobles didn't relent, which "got [petitioner's] nerves in a frenzy."

[Petitioner] described Nobles's behavior as "nagging," explaining it as follows: "Words, there was a lot of movements . . . constant—he would get up and then he would write on the floor and then he would kick. It was just a lot of—I—I mean it may seem petty. You know, but it was just a lot of irritation. Just—just talking and you know and just moving around. . . . It just didn't—it just didn't let up."

Around 2:00 or 2:30 that afternoon, thing s "came to boil." [Petitioner] was watching basketball on television. Nobles "started actin' crazy," and [petitioner] asked for quiet. Nobles continued with his "madness" and "just kept on goin' and kept on and just kept on goin."

[Petitioner] duct-taped Nobles's hands together, duct-taped his ankles, and put duct-tape over his mouth. He also put Nobles in a corner and placed a mattress over him. Nobles broke free, untaping his hands and mouth. [Petitioner] unwrapped his ankles, but Nobles "started back at his theatrics again." [Petitioner] told Nobles it was best for him to "leave next month," but Nobles said he did not want to. Nobles's nagging persisted. [Petitioner] grabbed him by the shoulders and shook him; Nobles flailed around, "doin' his little strikin' and, you know, kickin,'" and refused to "act like a civilized person." In [petitioner's] words, "it was just a naggin' thing" and "it was just pressin' me and then it blew me up." [Petitioner] grabbed a container of clear blue cleaning liquid and threw the liquid in Nobles's face. Nobles swallowed some of it, and it began to run out of his nose.

Nobles "seemed like he was just [losin'] it." Nobles kicked and slapped at [petitioner]—which [petitioner] agreed was Nobles defending himself—and [petitioner] punched Nobles in the chin. Nobles came at [petitioner] again, and [petitioner] punched him in the right eye. Nobles "went to the bathroom" and then "jumped and [] attacked again." Nobles had no weapon, but he was "tryin' to swing and tryin' to grab." [Petitioner] claimed that Nobles "flipped out" and it "scared" him, although he acknowledged that Nobles never threatened him or approached him in a threatening manner.

[Petitioner] grabbed a small “folding-knife” and, in “panic” and

“rage,” stabbed Nobles twice in the chest. [Petitioner] heard a “poof” as the air exited Nobles’s lungs. Nobles fell down, voided his bowels and bladder, and stopped moving. [Petitioner] believed Nobles was dead; he attempted chest compressions, but he did not consider calling 911. [Petitioner] knew, however, that he was in the wrong.

Confronted with the fact that Nobles had six stab wounds rather than two, [petitioner] initially maintained he stabbed Nobles only twice, but eventually agreed he had reached a boiling point and might not have realized all that he did. He acknowledged that a "few times in the past" he had become so angry that he did not remember what he was doing.

Roughly 12 hours after he killed Nobles, [petitioner] put Nobles's corpse into one of the apartment building's garbage cans and wheeled it over to the BART tracks, where he dumped it around 3:00 a.m. He also burned some clothing and household items to get rid of the evidence, and threw the knife down a gutter near the apartment. The next day, [petitioner] left the apartment and did not return until the search warrant had been executed.

[Petitioner] admitted to the officers that he “went too far” and stated repeatedly that Nobles did not deserve what happened to him. When asked if he premeditated the homicide, [petitioner] responded “No, no, no, I didn’t.”

Police later found the knife [petitioner] used to kill Nobles in the storm drain system, as [petitioner] had described. Police also found duct tape and the clear blue cleaning liquid in [petitioner's] apartment, as well as the garbage can used to transport Nobles's dead body.

5. Evidence of [petitioner's] Killing of Crowder in 1995

In 1995, the body of Titus Crowder, an African-American man who lived in an Oakland care home for men suffering from HIV, was found face down, bloody, and lifeless in his living room. Crowder was transported to a hospital and pronounced dead. Officers had recovered nine bullet casings near the body. They also found mail and other paperwork bearing [petitioner's] name, as well as photographs belonging to [petitioner] in a bedroom dresser drawer.

About three weeks after the homicide, [petitioner] was arrested and interviewed by David Politzer, at the time a sergeant with the Oakland Police Department. [Petitioner] told Politzer that he did not have a romantic relationship with Crowder but they were friends. They had not had previous arguments, but Crowder was "agitated" on the day he was killed.

[Petitioner] recounted that, on the day of the homicide, he and Crowder spent time together at a friend's home and then went to Crowder's apartment, where Crowder cooked dinner. After midnight, as [petitioner] got ready to leave, he asked Crowder

1 about \$200 that Crowder owed him. Crowder became angry,
2 hit [petitioner] in the jaw, and pulled out a gun and pointed it at
3 [petitioner]. [Petitioner] wrestled the gun away from Crowder,
4 aimed it at him, and fired until the gun was out of bullets.
[Petitioner] fled with the gun, walking from Crowder's apartment
near Oakland's Lake Merritt to a friend's house in Emeryville.
[Petitioner] threw the gun off of his friend's balcony, where it
was later discovered.

5 [Petitioner] pled guilty to voluntary manslaughter and served 10
6 years in prison for killing Crowder.

7 B. Defense Evidence

8 Defense investigator Kingston Farady testified that he
9 interviewed Ioma, who told him Nobles was a kind, gentle, and
10 humble person, but he was also a "fighter" who "wouldn't take
crap from anyone" and she had seen him become angry and
aggressive. In her testimony at trial, however, Ioma denied
making such statements.

11 Dr. David Howard, a forensic psychologist, opined that Nobles
12 suffered from schizophrenia. He explained that schizophrenics
13 can display aggression and hostility and frequently suffer from
14 delusions, hallucinations, and speech disorders. They are
15 more likely than an average person to be violent and to be the
16 victim of violence. Although medications can be used to treat
17 the symptoms of schizophrenia, the symptoms can reoccur if
18 the patient stops taking the medications.

19 Dr. Howard noted that Nobles had numerous involuntary
20 psychiatric holds and hospitalizations due to his symptoms.
According to medical records, when Nobles stopped taking his
medication, he would hear voices, his speech and behavior
would become disordered, and he would exhibit paranoid
delusions, inappropriate affect, fragmented thought processes,
impaired speech, and disturbed sleep. After reviewing a
transcript of [petitioner's] interview, Dr. Howard found the
descriptions of Nobles's behavior—constant words, writing on
the floor, kicking, moving around, and saying nonsensical
things—consistent with psychosis.

21 The parties stipulated that Nobles had been convicted of
22 misdemeanor battery in 2002, based on his assault of a
23 hospital admitting clerk.

24 *Wyatt*, 2018 WL 1633816, at *1-5.

25 **STANDARD OF REVIEW**

26 A district court may not grant a petition challenging a state conviction or sentence
27 on the basis of a claim that was reviewed on the merits in state court unless the state
28 court's adjudication of the claim: "(1) resulted in a decision that was contrary to, or

1 involved an unreasonable application of, clearly established Federal law, as determined
2 by the Supreme Court of the United States; or (2) resulted in a decision that was based
3 on an unreasonable determination of the facts in light of the evidence presented in the
4 State court proceeding." 28 U.S.C. § 2254(d). The first prong applies both to questions
5 of law and to mixed questions of law and fact, see *Williams (Terry) v. Taylor*, 529 U.S.
6 362, 407-09 (2000), while the second prong applies to decisions based on factual
7 determinations, see *Miller-El v. Cockrell*, 537 U.S. 322, 340 (2003).

8 A state court decision is "contrary to" Supreme Court authority, that is, falls under
9 the first clause of § 2254(d)(1), only if "the state court arrives at a conclusion opposite to
10 that reached by [the Supreme] Court on a question of law or if the state court decides a
11 case differently than [the Supreme] Court has on a set of materially indistinguishable
12 facts." *Williams (Terry)*, 529 U.S. at 412-13. A state court decision is an "unreasonable
13 application of" Supreme Court authority, falling under the second clause of § 2254(d)(1),
14 if it correctly identifies the governing legal principle from the Supreme Court's decisions
15 but "unreasonably applies that principle to the facts of the prisoner's case." *Id.* at 413.
16 The federal court on habeas review may not issue the writ "simply because that court
17 concludes in its independent judgment that the relevant state-court decision applied
18 clearly established federal law erroneously or incorrectly." *Id.* at 411. Rather, the
19 application must be "objectively unreasonable" to support granting the writ. *Id.* at 409.

20 Under 28 U.S.C. § 2254(d)(2), a state court decision "based on a factual
21 determination will not be overturned on factual grounds unless objectively unreasonable
22 in light of the evidence presented in the state-court proceeding." See *Miller-El*, 537 U.S.
23 at 340; see also *Torres v. Prunty*, 223 F.3d 1103, 1107 (9th Cir. 2000).

24 The state court decision to which § 2254(d) applies is the "last reasoned decision"
25 of the state court. See *Ylst v. Nunnemaker*, 501 U.S. 797, 803-04 (1991); *Barker v.*
26 *Fleming*, 423 F.3d 1085, 1091-92 (9th Cir. 2005). When there is no reasoned opinion
27 from the highest state court to consider the petitioner's claims, the court looks to the last
28 reasoned opinion. See *Nunnemaker* at 801-06; *Shackleford v. Hubbard*, 234 F.3d 1072,

1 1079 n.2 (9th Cir. 2000). The court looks to the California Court of Appeal opinion for
2 claims one and two.

3 The standard of review under AEDPA is somewhat different where the state court
4 gives no reasoned explanation of its decision on a petitioner's federal claim and there is
5 no reasoned lower court decision on the claim. In such a case, as with claim three, a
6 review of the record is the only means of deciding whether the state court's decision was
7 objectively reasonable. *Himes v. Thompson*, 336 F.3d 848, 853 (9th Cir. 2003); *Delgado*
8 v. *Lewis*, 223 F.3d 976, 981-82 (9th Cir. 2000). When confronted with such a decision, a
9 federal court should conduct an independent review of the record to determine whether
10 the state court's decision was an objectively unreasonable application of clearly
11 established federal law. *Himes*, 336 F.3d at 853; *Delgado*, 223 F.3d at 982.

12 DISCUSSION

13 As grounds for federal habeas relief, petitioner asserts that: (1) the trial court erred
14 by failing to instruct the jury on self-defense and imperfect self-defense; (2) there was
15 insufficient evidence of premeditation and deliberation for first-degree murder; and (3)
16 trial counsel was ineffective for failing to object to jury instructions and failing to present a
17 claim of self-defense.

18 I. SELF-DEFENSE

19 Petitioner first argues that the trial court erred by refusing to give jury instructions
20 regarding self-defense and imperfect self-defense.

21 BACKGROUND

22 The California Court of Appeal set forth the relevant background:

23 Defense counsel asked the trial court to instruct the jury with
24 CALCRIM No. 505 (self-defense) and CALCRIM No. 571
25 (unreasonable or imperfect self-defense). Relying on
26 testimony from Dr. Howard that Nobles [the victim] was
27 suffering a psychotic break, and on [petitioner's] statement to
28 police that Nobles "snapped," defense counsel argued that
[petitioner] acted in self-defense because he reasonably
believed he was in imminent danger. Counsel also argued that
[petitioner] acted in unreasonable self-defense because his
statement to police demonstrated that he was in actual fear,
even if such a fear was unreasonable.

1 The trial court declined to give the requested instructions,
2 observing that [petitioner] had not indicated in his statement to
police that he actually believed Nobles posed a danger to him.
3 [Petitioner] contends the court erred.

⁴ *Wyatt*, 2018 WL 1633816, at *11-12.

LEGAL STANDARD

6 A state trial court's refusal to give an instruction does not alone raise a ground
7 cognizable in federal habeas corpus proceedings. See *Dunckhurst v. Deeds*, 859 F.2d
8 110, 114 (9th Cir. 1988). The error must so infect the trial that the defendant was
9 deprived of the fair trial guaranteed by the Fourteenth Amendment. See *id.*

10 Due process requires that “criminal defendants be afforded a meaningful
11 opportunity to present a complete defense.” *Clark v. Brown*, 450 F.3d 898, 904 (9th Cir.
12 2006) (quoting *California v. Trombetta*, 467 U.S. 479, 485 (1984)). Therefore, a criminal
13 defendant is entitled to adequate instructions on the defense theory of the case. See
14 *Conde v. Henry*, 198 F.3d 734, 739 (9th Cir. 2000) (error to deny defendant’s request for
15 instruction on simple kidnapping where such instruction was supported by the evidence).

16 Due process does not require that an instruction be given unless the evidence
17 supports it. See *Hopper v. Evans*, 456 U.S. 605, 611 (1982); *Menendez v. Terhune*, 422
18 F.3d 1012, 1029 (9th Cir. 2005). The defendant is not entitled to have jury instructions
19 raised in his or her precise terms where the given instructions adequately embody the
20 defense theory. *United States v. Del Muro*, 87 F.3d 1078, 1081 (9th Cir. 1996).

21 Whether a constitutional violation has occurred will depend upon the evidence in
22 the case and the overall instructions given to the jury. See *Duckett v. Godinez*, 67 F.3d
23 734, 745 (9th Cir. 1995). An examination of the record is required to see precisely what
24 was given and what was refused and whether the given instructions adequately
25 embodied the defendant's theory. See *United States v. Tsinnijinnie*, 601 F.2d 1035, 1040
26 (9th Cir. 1979). In other words, it allows a determination of whether what was given was
27 so prejudicial as to infect the entire trial and so deny due process. See *id.*

28 The omission of an instruction is less likely to be prejudicial than a misstatement of

1 the law. See *Walker v. Endell*, 850 F.2d 470, 475-76 (9th Cir. 1988) (citing *Henderson v.*
2 *Kibbe*, 431 U.S. 145, 155 (1977)). Thus, a habeas petitioner whose claim involves a
3 failure to give a particular instruction bears an "especially heavy burden." *Villafuerte v.*
4 *Stewart*, 111 F.3d 616, 624 (9th Cir. 1997) (quoting *Henderson*, 431 U.S. at 155). The
5 significance of the omission of such an instruction may be evaluated by comparison with
6 the instructions that were given. *Murtishaw v. Woodford*, 255 F.3d 926, 971 (9th Cir.
7 2001) (quoting *Henderson*, 431 U.S. at 156).

8 **ANALYSIS**

9 The California Court of Appeal set forth the relevant state law and denied this
10 claim:

11 No evidence supported [petitioner's] claim of self-defense,
12 because there was no evidence that any belief he had of being
13 in danger of imminent harm was reasonable. Nobles [the
14 victim] did not have a weapon, and although he approached in
15 a "rage," he was merely "doin' his little strikin' and you know,
kickin'," and "tryin' to swing and tryin' to grab." There was no
evidence of any significant force in Nobles's attempted blows,
or any reasonable basis for believing that Nobles was about to
cause [petitioner] great bodily injury.

16 Furthermore, no evidence supported [petitioner's] claim of self-
17 defense or imperfect self-defense, because there was no
18 evidence that [petitioner's] had any actual belief, reasonable or
not, that he was in danger of imminent harm. [Petitioner]
19 repeatedly told officers that Nobles did not have a weapon and
20 that Nobles had not threatened him. Although [petitioner]
21 claimed he "felt threatened" at the particular moment when
22 Nobles "snapped," there was no evidence that [petitioner]
23 believed he was in imminent threat of death or great bodily
injury. To the contrary, when asked "what about his behavior"
24 of Nobles made him feel threatened, [petitioner] said that
Nobles was "unstoppable" in his "*noise, talking and rambling*
and . . . writing on the floor." (Italics added.) [Petitioner]
insisted that Nobles never approached him in a threatening
manner, never threatened him verbally, and "was never a
threatening person."

25 Finally, [petitioner] was not entitled to an instruction on self-
26 defense or imperfect self-defense because he was the initial
27 aggressor in the fight. (*In re Christian S.* (1994) 7 Cal. 4th 768,
773 fn. 1 [neither self-defense nor imperfect self-defense may
be invoked by a defendant who by wrongful conduct such as
initiation of a physical assault has created circumstances under
which his adversary's attack is legally justified].) Although
[petitioner] stabbed Nobles to death after Nobles approached

1 him and kicked and slapped him, that occurred only after
2 [petitioner] had bound Nobles with duct tape, taped over his
3 mouth, put a mattress over him, and threw cleaning solution
4 into his face. Indeed, [petitioner] agreed in his interview with
police that Nobles's kicking and slapping, before [petitioner]
punched him, was Nobles defending himself against
[petitioner].

5 [Petitioner] contends his acts of binding Nobles with duct tape
6 and throwing a cleaning solution at him were lawful attempts to
resist Nobles's misdemeanor offense of disturbing the peace.
(See Pen. Code, § 415, subd. (2); § 693.) But Penal Code
7 section 693 only allows “[r]esistance sufficient to prevent the
offense.” [Petitioner’s] binding Nobles with duct tape, dousing
8 him with a cleaning solution, and other acts were more than
that.

9 [Petitioner] also argues that he was not the initial aggressor
10 because, before [petitioner] bound him with duct tape, Nobles
11 had made noise for hours. But he provides no authority that
Nobles’s level of disruption made him the initial aggressor in
12 their fight. In fact, [petitioner] characterized Nobles’s behavior
as “nagging” and conceded that others might consider it petty.

13 *Wyatt*, 2018 WL 1633816, at *12-13.

14 The state court’s denial of this claim was not an unreasonable application of
15 Supreme Court authority or an unreasonable determination of the facts. Petitioner has
16 failed to demonstrate that the trial court’s failure to give the jury instruction so infected the
17 trial that he was denied a fair trial under the Fourteenth Amendment.

18 While petitioner is entitled to jury instruction for his theory of the case, the
19 evidence in the case must support the theory. See *Conde* at 734; *Hopper* at 605. As set
20 forth in detail by the California Court of Appeal, there was no evidence to support a jury
21 instruction of self-defense or unreasonable self-defense. According to petitioner’s
22 statement to law enforcement, the victim had no weapon and had not threatened
23 petitioner. Petitioner further told law enforcement that the victim had been making noise,
24 rambling and writhing on the floor and that it was only after petitioner had bound the
25 victim with duct tape, taped over his mouth, put a mattress over him, and threw a
26 cleaning solution onto his face that the victim approached petitioner to kick and slap him.
27 The state court found that petitioner was the initial aggressor and, looking at all the
28 evidence determined that he was not entitled to a self-defense instruction under state

1 law. Petitioner had even conceded to law enforcement that the victim was defending
2 himself at that time. The denial of this claim by the state court was not unreasonable.

3 Even assuming the trial court erred by failing to give the instructions, any error was
4 harmless and did not have a “substantial and injurious effect or influence in determining
5 the jury’s verdict.” See *Brecht v. Abrahamson*, 507 U.S. 619, 637 (1993). For the same
6 reasons as set forth above, there was overwhelming evidence of petitioner’s guilt and
7 that the victim was not a threat to him. Petitioner has failed to show the state court
8 opinion was objectively unreasonable. This claim is denied.

9 **II. SUFFICIENCY OF THE EVIDENCE**

10 Petitioner contends that there was insufficient evidence to find premeditation and
11 deliberation to support first-degree murder.

12 **BACKGROUND**

13 Pursuant to state law, three kinds of evidence are used to determine whether
14 premeditation and deliberation exist: preexisting motive, planning activity and manner of
15 killing. *People v. Brady*, 50 Cal. 4th 547, 561-62 (2010). These factors “are merely a
16 framework for appellate review; they need not be present in some special combination or
17 afforded special weight, nor are they exhaustive.” *Id.* In this case, the California Court of
18 Appeal noted there was no evidence of planning activity. *Wyatt*, at *5. The state court
19 then set forth the evidence that did support premeditation and deliberation:

20 **1. Preexisting Motive**

21 In his confession to police, [petitioner] explained that he killed
22 Nobles after hours of Nobles moving, making noise, babbling
23 incoherently, acting out, and failing to cease this activity no
24 matter how many times [petitioner] asked. Despite [petitioner]
25 duct-taping Nobles’s mouth, hands and ankles, throwing
26 cleaning liquid in his face, telling him to move out, grabbing him
27 by the shoulders and shaking him, and punching him twice in
the face, Nobles’s “nagging” appeared unstoppable. From this
evidence, the jury could reasonably conclude that Nobles had
become so annoying to [petitioner], and [petitioner’s] efforts to
quiet him and convince him to stop or move out had proven so
fruitless, that [petitioner] decided he had to kill Nobles in order
to get him to stop.

28 [Petitioner] acknowledges that Nobles’s conduct gave

[petitioner] a reason to try to make Nobles stop his behavior, but he argues it was not a motive for [petitioner] to actually kill him. Whether it was reasonable for [petitioner] to want to kill Nobles under the circumstances is not the point, however; the point is that the evidence suggested that [petitioner] had determined in his own mind a reason to kill Nobles, even if it was not what most people would consider a good one.

2. Manner of Killing

Evidence indicating that a killing was carried out in a particular and exacting manner may, in combination usually with evidence of planning or motive, support a finding of premeditation and deliberation. (People v. Anderson (1968) 70 Cal.2d 15, 27.)

Here, [petitioner's] killing of Nobles was the culmination of an escalating, hours-long incident, in which [petitioner] had ample time for reflection before he inflicted the fatal stab wounds. After binding Nobles with duct tape, throwing cleaning liquid in his face, grabbing him by the shoulders, shaking him, and punching him to no avail, [petitioner] picked up the folding knife (it is unclear if he had to unfold it) and plunged the blade twice into Nobles's chest. [Petitioner] conceded that he might have lost count of how many times he really stabbed Nobles, and indeed, the coroner observed six recent stab wounds on Nobles's body. From the manner in which [petitioner] killed Nobles—multiple stab wounds to the chest—along with [petitioner's] motive for killing him, the jury could reasonably conclude that [petitioner] had weighed the considerations and decided to end Nobles's life. FN. 4

FN. 4. Alternatively, the jury could have reasonably inferred that [petitioner] decided to kill Nobles when he continued his barrage of noise and movement as [petitioner] tried to watch the basketball game on Sunday afternoon, before duct-taping him; if so, [petitioner's] acts of duct-taping, throwing cleaning liquid in Nobles's face, and punching Nobles over a span of time could be viewed as acts of torture leading up to the fatal stabbing. Acts of torture may support a conclusion of premeditation and deliberation. (See *People v. Proctor* (1992) 4 Cal. 4th 499, 529–530.)

3. [Petitioner's] Actions after the Killing

After [petitioner] stabbed Nobles at least twice in the chest, he heard a “poof” of air exit Nobles's lungs and watched as Nobles collapsed and voided his bladder and bowels. He did not call 911, either for medical assistance or to summon the police. Instead, he waited in the apartment with Nobles's dead body for approximately 12 hours—until around 3:00 a.m. when he would less likely be seen by police or witnesses—and then wheeled the corpse in a garbage can to the BART tracks and dumped it. From this evidence, the jury could reasonably infer that [petitioner's] callousness toward Nobles's body reflected

1 not only his state of mind after the stabbing, but his state of
2 mind toward Nobles before and during the stabbing, consistent
3 with his deliberative decision to end Nobles's life.
4

5 Based on the evidence of motive, the manner of the killing, and
6 [petitioner's] conduct after Nobles's death, there was
7 substantial evidence that the murder of Nobles was perpetrated
8 with premeditation and deliberation—even without
9 consideration of the fact that [petitioner] had also killed Crowder
10 in 1995, which we consider next.
11

12 4. 1995 Homicide
13

14 The trial court admitted evidence of [petitioner's] 1995 homicide
15 of Crowder under Evidence Code section 1101, subdivision (b)
16 and the doctrine of chances, and subsequently instructed the
17 jury that, if it found that [petitioner] committed this uncharged
18 offense, "you may, but are not required to" consider the
19 evidence for the limited purpose of deciding whether or not
20 [petitioner] "acted with the *specific intent and/or mental state*
21 required by the charged offense or any lesser offense" and
22 whether [petitioner's] explanation for the killing of Nobles was
23 true. (Italics added. See *People v. Steele* (2002) 27 Cal. 4th
24 1230, 1244 (*Steele*).) The court further instructed the jury to
25 "consider the similarity or lack of similarity between the
26 uncharged and the charged offense" in evaluating the
27 evidence. From the proof that [petitioner] perpetrated the two
28 homicides, it was permissible for the jury to infer that
[petitioner's] killing of Nobles was intended and premeditated.
(*Ibid.*)

Wyatt, 2018 WL 1633816, at *5-7 (footnote omitted).

LEGAL STANDARD

The Due Process Clause "protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged." *In re Winship*, 397 U.S. 358, 364 (1970). A state prisoner who alleges that the evidence in support of his state conviction cannot be fairly characterized as sufficient to have led a rational trier of fact to find guilt beyond a reasonable doubt therefore states a constitutional claim, see *Jackson v. Virginia*, 443 U.S. 307, 321 (1979), which, if proven, entitles him to federal habeas relief, see *id.* at 324.

The Supreme Court has emphasized that "Jackson claims face a high bar in federal habeas proceedings . . ." *Coleman v. Johnson*, 566 U.S. 650, 651 (2012) (per curiam) (finding that the 3rd Circuit "unduly impinged on the jury's role as factfinder" and failed to apply the deferential standard of *Jackson* when it engaged in "fine-grained

1 factual parsing" to find that the evidence was insufficient to support petitioner's
2 conviction). A federal court reviewing collaterally a state court conviction does not
3 determine whether it is satisfied that the evidence established guilt beyond a reasonable
4 doubt. *Payne v. Borg*, 982 F.2d 335, 338 (9th Cir. 1992), *cert. denied*, 510 U.S. 843
5 (1993); see, e.g., *Coleman*, 566 U.S. at 656 ("the only question under *Jackson* is whether
6 [the jury's finding of guilt] was so insupportable as to fall below the threshold of bare
7 rationality"). The federal court "determines only whether, 'after viewing the evidence in
8 the light most favorable to the prosecution, *any* rational trier of fact could have found the
9 essential elements of the crime beyond a reasonable doubt." *Payne*, 982 F.2d at 338
10 (quoting *Jackson*, 443 U.S. at 319). Only if no rational trier of fact could have found proof
11 of guilt beyond a reasonable doubt has there been a due process violation. *Jackson*, 443
12 U.S. at 324; *Payne*, 982 F.2d at 338.

13 ANALYSIS

14 The California Court of Appeal set forth the relevant state law and denied this
15 claim:

16 [Petitioner] insists that the evidence showed he did not act with
17 premeditation and deliberation. In his view, he tried "low-level
18 physical efforts to stop" Nobles's disruptions, which led to
19 Nobles charging [petitioner] to kick and slap him; immediately
20 before the homicide, Nobles "attacked again," "snapped" "in a
21 rage," and was swinging his hands and trying to grab
22 [petitioner]; and [petitioner] reacted in a state of "panic" and
23 "rage" by grabbing the knife and stabbing Nobles twice, trying
24 thereafter to revive him. But even if the evidence was
reasonably subject to an inference that [petitioner] did not
premeditate or deliberate, it was also reasonably subject to an
inference that he did, choosing to end Nobles's nagging once
and for all by stabbing him repeatedly in the chest until he was
dead. It is not our role to reweigh the evidence or choose
between permissible inferences; we merely determine whether
there was substantial evidence to support the jury's verdict, and
in this case there was.

25 [Petitioner] told the police he did not premeditate the killing and
26 claimed he acted "out of the heat of rage." The jury, however,
27 did not have to believe [petitioner's] self-serving depictions of
his mental state. To the contrary, the jury could have
reasonably concluded that [petitioner's] use of a legalistic
phrase such as "out of the heat of rage" was a disingenuous
attempt to minimize his crime, and that [petitioner's] story was

1 so similar to the one he gave police with respect to killing
2 Crowder—a good relationship with his victim until the victim
3 suddenly lashed out—that he lied to police about his mental
4 state in killing Nobles to obtain a deal based on a non-malice
5 killing like he received with respect to Crowder. The jury heard
6 the audiotape of [petitioner's] confession, and it was for the jury
7 to determine the credibility of [petitioner's] assertions.
8

9 [Petitioner] argues that, if the jury did not believe him, there was
10 "no evidence of what happened" and therefore no evidence of
11 first degree murder. Not so. The jury could have rejected
12 [petitioner's] depiction of his state of mind, while accepting his
13 depiction of what occurred to the extent it was consistent with
14 the physical evidence. From the evidence of what occurred,
15 the jury could reasonably conclude that, contrary to
16 [petitioner's] claims, [petitioner] killed Nobles with deliberation
17 and premeditation.

18 [Petitioner] contends the jury should have believed him,
19 because his account of the killing of Nobles was borne out by
20 the evidence: his description of the punches he threw to
21 Nobles's jaw and eye corresponded to Detective Armijo's
22 observation of those injuries; his description of stabbing Nobles
23 twice in the chest corresponded with Dr. Rogers's testimony
24 that the fatal wounds were two stab wounds to the same area
25 of the chest; and his description of Nobles's disruptive behavior
26 was consistent with Dr. Howard's testimony of the symptoms
27 Nobles exhibited as a schizophrenic. But that's the point: the
28 jury could have accepted [petitioner's] version of what
happened to the extent consistent with other testimony, but
concluded that these events and the other evidence
demonstrated his premeditation and deliberation.

17 [Petitioner] fails to establish that the evidence was insufficient
18 for first degree murder.

19 *Wyatt*, 2018 WL 1633816, at *7-8 (footnote omitted)

20 Petitioner's argument that there was insufficient evidence to find premeditation and
21 deliberation to support first-degree murder was rejected by the state court. To the extent
22 petitioner argues that the state court was incorrect in its analysis of state law and
23 premeditation and deliberation, he is not entitled to habeas relief. The *Jackson* standard
24 must be applied with reference to the substantive elements of the criminal offense as
25 defined by state law. *Jackson*, 443 U.S. at 324 n.16; see, e.g., *Boyer v. Belleque*, 659
26 F.3d 957, 968 (9th Cir. 2011) (concluding it was not unreasonable, in light of Oregon
27 case law, for Oregon court to conclude that a rational jury could find beyond a reasonable
28 doubt that petitioner intended to kill his victim based on proof that he anally penetrated

1 several victims with knowledge that he could infect them with AIDS). The state court's
2 ruling on the state law issue is binding on this court.

3 The "minimum amount of evidence that the Due Process Clause requires to prove
4 the offense is purely a matter of federal law," *Coleman*, 566 U.S. at 655, and petitioner
5 has not shown that the state court was objectively unreasonable in finding sufficient
6 evidence to support the conviction in light of the high bar for *Jackson* claims. While there
7 was not overwhelming evidence of premeditation and deliberation to support first-degree
8 murder, the state court decision finding that jurors could have concluded that the act was
9 premeditated and deliberate was not objectively unreasonable. A review of the record
10 supports the determination the state court made after considering evidence of a
11 preexisting motive, the manner of the killing, the actions afterwards and the facts of the
12 1995 homicide.

13 Petitioner has failed to demonstrate that the state court decision was objectively
14 unreasonable in light of the high bar for sufficiency of the evidence claims on habeas
15 review. This court does not determine whether it is satisfied that there was sufficient
16 evidence, only that viewing the evidence in the light most favorable to the prosecution,
17 any rational trier of fact could have found the essential elements beyond a reasonable
18 doubt. A review of the evidence demonstrates that jurors could have determined that
19 there was premeditation and deliberation to support first-degree murder. The state court
20 decision was not unreasonable, and therefore this claim is denied.

21 **III. INEFFECTIVE ASSISTANCE OF COUNSEL**

22 Petitioner argues that trial counsel was ineffective for failing to object to erroneous
23 jury instructions and for failing to present a defense of self-defense.

24 **LEGAL STANDARD**

25 A claim of ineffective assistance of counsel is cognizable as a claim of denial of
26 the Sixth Amendment right to counsel, which guarantees not only assistance, but
27 effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668, 686 (1984).
28 The benchmark for judging any claim of ineffectiveness must be whether counsel's

1 conduct so undermined the proper functioning of the adversarial process that the trial
2 cannot be relied upon as having produced a just result. *Id.*

3 In order to prevail on a Sixth Amendment ineffectiveness of trial counsel claim,
4 petitioner must establish two things. First, he must establish that trial counsel's
5 performance was deficient, i.e., that it fell below an "objective standard of
6 reasonableness" under prevailing professional norms. *Strickland*, 466 U.S. at 687-88.
7 Second, he must establish that he was prejudiced by trial counsel's deficient
8 performance, i.e., that "there is a reasonable probability that, but for counsel's
9 unprofessional errors, the result of the proceeding would have been different." *Id.* at 694.
10 A reasonable probability is a probability sufficient to undermine confidence in the
11 outcome. *Id.*

12 **ANALYSIS**

13 This claim was summarily denied by the California Supreme Court. Answer, Ex.
14 M. This court has conducted an independent review of the record to determine whether
15 the state court's decision was an objectively unreasonable application of clearly
16 established federal law. *Himes*, 336 F.3d at 853; *Delgado*, 223 F.3d at 982. Petitioner's
17 argument on how counsel was ineffective is not exactly clear. In his petition to the
18 California Supreme Court that he attached to this federal habeas petition, petitioner
19 stated that counsel was ineffective because of improper jury instructions and for "let[ting]
20 the prosecutor charge him with first-degree murder instead of manslaughter. Docket No.
21 19 at 9-10.

22 To the extent petitioner argues in this federal petition that counsel was ineffective
23 for failing to argue self-defense and for failing to request jury instructions for self-defense
24 and unreasonable self-defense, he is not entitled to relief. As discussed above, trial
25 counsel did request jury instructions for self-defense and unreasonable self-defense, but
26 the request was denied because there was no evidence to support giving these
27 instructions. Petitioner's own statements to police, along with other evidence,
28 contradicted any argument that could have been made for self-defense and provided

1 support for premeditation and deliberation. In addition to requesting jury instructions on
2 self-defense and unreasonable self-defense, trial counsel tried to bolster a self-defense
3 claim by obtaining an expert witness and presenting testimony to show that the victim
4 was acting violently towards petitioner. *Wyatt*, 2018 WL 1633816, at *4-5. However, the
5 jury did not credit these arguments and evidence. Petitioner does not describe what
6 other actions counsel should have taken. Petitioner's conclusory allegations that counsel
7 was ineffective with no support are insufficient to warrant habeas relief. See *Strickland*,
8 466 U.S. at 690 ("A convicted defendant making a claim of ineffective assistance must
9 identify the acts or omissions of counsel that are alleged not to have been the result of
10 reasonable professional judgment.") The California Supreme Court's denial of this claim
11 was not objectively unreasonable. The claim is denied.¹

12 APPEALABILITY

13 The federal rules governing habeas cases brought by state prisoners require a
14 district court that denies a habeas petition to grant or deny a certificate of appealability
15 ("COA") in the ruling. See Rule 11(a), Rules Governing § 2254 Cases, 28 U.S.C. foll.
16 § 2254 (effective December 1, 2009).

17 To obtain a COA, petitioner must make "a substantial showing of the denial of a
18 constitutional right." 28 U.S.C. § 2253(c)(2). "Where a district court has rejected the
19 constitutional claims on the merits, the showing required to satisfy § 2253(c) is
20 straightforward: The petitioner must demonstrate that reasonable jurists would find the
21 district court's assessment of the constitutional claims debatable or wrong." See *Slack v.*
22 *McDaniel*, 529 U.S. 473, 484 (2000). Section 2253(c)(3) requires a court granting a COA
23 to indicate which issues satisfy the COA standard. Here, the court finds that the second
24 claim regarding the sufficiency of the evidence meets the above standard and

25
26

¹ Petitioner has also attached a few pages from a hearing to replace his counsel pursuant
27 to *People v. Marsden*, 2 Cal. 3d 118 (1970). Docket No. 19 at 13-15. This does not
28 support his argument for ineffective assistance of counsel, and he has not presented or
exhausted a separate claim that the trial court erred in denying the request to replace
counsel.

1 accordingly GRANTS the COA solely for that claim. *See generally Miller-El*, 537 U.S. at
2 327.

3 Accordingly, the clerk shall forward the file, including a copy of this order, to the
4 Ninth Circuit Court of Appeals. *See Fed. R. App. P. 22(b); United States v. Asrar*, 116
5 F.3d 1268, 1270 (9th Cir. 1997).

6 **CONCLUSION**

7 1. The petition for writ of habeas corpus is **DENIED** on the merits. A certificate of
8 appealability is **GRANTED**. *See Rule 11(a) of the Rules Governing Section 2254 Cases.*
9 Petitioner is cautioned that the court's ruling on the certificate of appealability does not
10 relieve him of the obligation to file a timely notice of appeal if he wishes to appeal.

11 2. Petitioner's motion to enlarge (Docket No. 40) is **DENIED**.
12 3. The clerk shall close the file.

13 **IT IS SO ORDERED.**

14 Dated: December 5, 2019

15 */s/ Phyllis J. Hamilton*

16

17 PHYLLIS J. HAMILTON
18 United States District Judge